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NOTES

THE VIRGINIA PASSENGER RATE CASES.

The recent decision of the Supreme Court of the United States in *Prentis* v. *Atlantic Coast Line Company, etc., etc.,* is of interest in determining the power of the Federal Courts to enjoin the actions of state rate-making commissions.

It has already been decided that such commissions cannot be enjoined from establishing and fixing rates, on the ground that to grant an injunction would be to restrain legislation.[1] But on the other hand an injunction will issue to restrain the

[1] *McChord* v. *Louisville, etc., Railroad Company,* 183 U. S. 483 (1901).

enforcement of the order when fixed if the rates are so low as to be confiscatory.[2]

The Constitution of Virginia[3] provides for a Corporation Commission. The Commission, among other things, has power to fix rates for transportation. The method of procedure is briefly as follows: Notice is first given of the contemplated action; the Commission then hears objections and evidence against the proposed change. If an order is passed it is published and then goes into effect. An appeal is given as of right to any person deeming himself aggrieved by such action and to the Commonwealth.[4] The appeal is directly to the Court of Appeals of the State and this Court may substitute for the order of the Commission such order as in its opinion the Commission should have made, and "such substituted order shall have the same force and effect (and none other) as if it had been entered by the Commission at the time the original order appealed from was entered."[5] During the appeal a *supersedeas* may be granted under certain conditions.

If no appeal is brought within six months the order of the Commission is final. The Commission is also given power to enforce its orders, and to hear and try cases arising under them.

The Prentis case arose as follows: A preliminary hearing was held at which the six railroad companies, that ultimately came before the Supreme Court, gave evidence. The Commission then entered an order lowering the passenger rates of these railroad companies. Publication of the order was directed, and at this stage the six companies filed bills in the Circuit Court of the United States to restrain the members of the Commission from publishing or taking any other steps to enforce the order on the ground that the rates fixed by the order were confiscatory. The Commission pleaded among other things that the proceedings before them were proceedings in a court of the state, which the courts of the United States were forbidden to enjoin.[6] The Circuit Court granted the injunction. The Supreme Court[7] reversed the decree of the Circuit Court on the ground that the fixing of rates is a legisla-

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[2] *Reagan* v. *Trust Company*, 154 U. S. 362 (1893). See also *Western Union Tel. Co.* v. *Myatt*, 98 Fed. 335.

[3] Sections 155 and 156.

[4] Constitution of Va., sec. 156d and Pollard's Code, sec. 1313a (34).

[5] Constitution of Va., sec. 156g.

[6] Revised Statutes, par. 720.

[7] Mr. Justice Holmes delivered the opinion.

tive act, and that the railroad companies should have appealed to the Court of Appeals of Virginia to make final the legislative act.

The Court assumed that some of the powers of the Commission are judicial, such as the power to hear cases arising under their orders when the rates should be finally fixed. But until the rates are fixed the Commission is only acting as a legislative body. The distinction between legislative and judicial acts is thus stated: "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future, and therefore is an act legislative and not judicial in kind." And in another part of the opinion: "The nature of the final act determines the nature of the previous inquiry. So when the final act is legislative the decision which induces it cannot be judicial in the practical sense, although the questions considered might be the same that would arise in the trial of a case." It follows that when an appeal from the order of the Commission is taken, and a *supersedeas* granted, the Court of Appeals becomes the body that fixes the rate and its decision, therefore, must be legislative, and in the words of the Court: "It seems to us only a just recognition of the solicitude with which their (the companies') rights have been guarded, that they should make sure that the State in its final legislative action would not respect what they think their rights to be, before resorting to the Courts of the United States." The Court has to admit that it cannot be stated as a general proposition that a right to resort to the Federal Courts must depend on whether the complainant has used every effort to prevent unconstitutional legislation. "But this case can hardly be disposed of on purely general principles. The question that we are considering may be termed a question of equitable fitness or propriety, and must be answered on the particular facts. The establishment of railroad rates is not like a law that affects private persons who may never have heard of it till it was passed." The Court admits, however, that if the Court of Appeals affirms a rate, or makes one which is confiscatory, an injunction will issue to restrain its enforcement.

The difference between this case and cases where a corporation commission has been restrained is brought out by a com-

parison with *Reagan* v. *Trust Co.*[8] In that case an appeal was allowed from the rates fixed by the Commission to certain courts, but no provision was made that these courts could modify or revise the order of the Commission. The Supreme Court of the United States declared that the rates fixed were unreasonable and therefore of no effect, but that it could not fix rates itself or restrain the Commission from establishing other rates.

The Prentis case then differs from this case in the fact that the Court of Appeals of Virginia, the Court to which appeals from the Commission must be taken, when it hears such an appeal is, in the opinion of the Supreme Court of the United States, a legislative body.[9]

Smythe v. *Ames*[10] contains some elements from both of the above cases. In the Smythe case an act of the legislature of Nebraska fixed the rates. The same act allowed an action to be brought in the Supreme Court of the State to show that the rates so fixed were unreasonable. If the Court found the rates unreasonable it issued its order to a transportation board directing them to permit the complaining company to raise its rates to any sum in the discretion of the board.

Here we have power in the Court as in the Reagan case to act judicially and to declare the rate unreasonable, but yet it has authority to order a different law to be made, that is, that the board shall fix a higher rate for that company.

The Supreme Court of the United States held that an injunction would issue to restrain the enforcement of the act of the legislature, in spite of the contention of the board of transportation that the Federal Courts had no equity jurisdiction because of the special remedy provided by the statute.

Speaking of the appeal to the Court of Appeals the Court in the Prentis case says: "They (the companies) might very well have taken the matter before the Supreme Court of Appeals. No new evidence and no great additional expense would have been involved."

This suggests the question as to the relative advantages of an

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[8] 154 U. S. 362.

[9] In *Chicago, etc.*, v. *Minnesota*, 134 U. S. 418 (1889), the Act of the Legislature of Minnesota creating a corporation commission came before the Supreme Court. By the Act the State Court on appeal is allowed to modify the orders of the commission (see the report of the case, pages 431-2) as in the Prentis case. But the Supreme Court did not pass upon the question now presented.

[10] 169 U. S., 466.

injunction over the method of procedure provided by the Virginia Constitution.

The Constitution provides [11] that upon the granting of an appeal a writ of *supersedeas* may be awarded by the Appellate Court suspending the operation of the order appealed from, until the final disposition of the appeal. But the company appealing must file a suspending bond, which has been approved by the Commission (or on review by the Court of Appeals).

"The Commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any *supersedeas*), of the order or requirement appealed from, to keep such accounts, and to make such reports, verified by oath, as may, in the judgment of the Commission, suffice to show the amounts being charged or received by the company, * * * together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company pending the appeal be not sustained."

Suppose the Commission requires an unreasonable suspending bond, or makes such requirements in regard to keeping accounts that the company cannot comply with them and at the same time operate the railway profitably. In the first case, that of the suspending bond, it seems that during the appeal the rates fixed by the Commission could be enforced against the railway. And in the second case, that of keeping the accounts, apparently no appeal on this question is provided for.

The practical effect of the decision seems to be, that where it is in the power of a railway company by reasonable means to prevent a legislative act being passed against them, they must avail themselves of these means before seeking the aid of the Federal Courts.

The Liability of an Agent without Authority.

Ordinarily when an agent has contracted without authority from his principal, the latter is unanswerable unless he subsequently ratifies such act. An effort is then made to attach liability to the agent himself. Three situations may arise: (1) where the agent knowingly and falsely represents that he has authority from the principal, and a third party contracts with

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[11] Const., sec. 156e.